

## REMARKS

### **I. Introduction**

With the addition of claims 10 to 18, claims 1 to 18 are currently pending in this application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicants respectfully request acknowledgment of the claim for foreign priority and an indication that a certified copy of the priority document has been received. In this regard, a claim for priority to German Application No. 102 35 368.9 was made, inter alia, in the "Combined Declaration and Power of Attorney for Patent Application" submitted on December 5, 2003, and a certified copy of German Application No. 102 35 368.9 was submitted on July 30, 2003.

Applicants thank the Examiner for considering the previously filed Information Disclosure Statement, PTO Form-1449 and cited reference.

### **II. Rejection of Claims 1 to 6 and 9 Under 35 U.S.C. § 102(b)**

Claims 1 to 6 and 9 were rejected under 35 U.S.C. § 102(b) as anticipated by U.S. Patent No. 6,517,107 ("Johnson et al."). Applicants respectfully submit that Johnson et al. do not anticipate the present claims for the following reasons.

Claim 1 relates to a device for automatically switching lighting equipment. Claim 1 recites that the device includes a sensor element for detecting at least infrared radiation and a filter element adapted such that substantially only infrared radiation is detectable by the sensor element.

Johnson et al. purportedly relate to methods for controlling a system in a vehicle using a transmitting/receiving transducer and/or while compensating for thermal gradients. The Office Action alleges that sensors 6, 7, 9 and 11 to 14 constitute a sensor element for detecting at least infrared radiation. However, nowhere do Johnson et al. disclose, or even suggest, that elements 6, 7, 9 and 11 to 14 detect infrared radiation. Sensors 6 and 7 are stated to be in the form of **force or pressure sensors**, which measure the force or pressure on the seat or seat back, or **displacement measuring sensors**, which measure the displacement of the seat surface or the entire seat such as through the use of strain gauges mounted on the seat structural members. See col. 31, line 60 to col. 32, line 6. Further, sensors 11

to 14 are stated to be ultrasonic sensors not infrared detectors. See col. 32, lines 9 to 13.

The Office Action further alleges that filter element 20 constitutes a filter element as claimed. Respectfully, nowhere do Johnson et al. disclose, or even suggest, that filter element 20 is adapted such that substantially only infrared radiation is detectable by a sensor element. As indicated above, Johnson et al. do not directly state that the device includes a sensor configured to sense infrared radiation, let alone a filter adapted such that substantially only infrared radiation is detectable by a sensor element. The outputs of receivers ChA to ChD, which are indicated to be receivers of ultrasonic sensors, as shown in Figure 22, are stated to be input to a band pass filter 20 through a multiplex circuit 19, which is stated to be switched in synchronization with a timing signal from the ultrasonic sensor drive circuit 18. See col. 33, lines 40 to 43. The band pass filter 20 is stated to remove a low frequency wave component from the output signal based on each of the reflected wave USRW and is also stated to remove some of the noise. See col. 33, lines 43 to 46. The output signal based on each of the reflected wave USRW is stated to be passed through the band pass filter 20 and then is stated to be amplified by an amplifier 20. See col. 33, lines 46 to 49. The filter 20 processes the input after it is already detected by the sensor. As can be seen in Figure 22, the filter is downstream of the sensors, and thus, cannot be said to be adapted to affect the sensors in any manner, i.e., adapted such that substantially only infrared radiation is detectable by a sensor element. Therefore, Johnson et al. do not disclose, or even suggest, all of the limitations of claim 1.

To anticipate a claim, each and every element as set forth in the claim must be found in a single prior art reference. Verdegaal Bros. v. Union Oil Co. of Calif., 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). Furthermore, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim.” Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989). That is, the prior art must describe the elements arranged as required by the claims. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). As more fully set forth above, it is respectfully submitted that Johnson et al. do not disclose, or even suggest, all of the limitations of claim 1. Therefore, it is respectfully submitted that Johnson et al. do not anticipate claim 1.

As for claims 2 to 6 and 9, which ultimately depend from claim 1 and therefore include all the limitations of claim 1, it is respectfully submitted that Johnson et al. do not anticipate these dependent claims for at least the same reasons provided above in support of the patentability of claim 1.

In further regard to claim 2, the Office Action references col. 21, lines 2 to 65. However, the cited portion makes no mention of automatically switching lighting equipment for a motor vehicle.

In further regard to claim 3, the Office Action refers to Figures 21 and 22. However, these figures make no mention of a control device including an element for switching lighting equipment of a motor vehicle as a function of a signal of a sensor element.

In further regard to claim 5, the Office Action refers to col. 26, lines 25 to 65 and col. 27, lines 1 to 26. However, the cited portions discuss electro-chromic glass not a rain sensor.

In further regard to claim 6, the Office Action refers to col. 36, lines 3 to 55. However, the cited portion discusses layers of a seat 2 not a layer situated on at least a surface of a light conducting element.

Therefore, for all the foregoing reasons, withdrawal of this rejection is respectfully requested.

### **III. Rejection of Claims 7 and 8 Under 35 U.S.C. § 103(a)**

Claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Johnson et al. and U.S. Patent Publication No. 2003/0169454 ("Vogt et al."). Applicants respectfully submit that the combination of Johnson et al. and Vogt et al. does not render unpatentable the present claims for the following reasons.

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir.

1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Claims 7 and 8 depend from claim 1 and therefore include all of the limitations of claim 1. As indicated above, Johnson et al. do not disclose, or even suggest, a device for automatically switching lighting equipment including a sensor element for detecting at least infrared radiation and a filter element adapted such that substantially only infrared radiation is detectable by the sensor element. Vogt et al. purportedly relate to infrared detection of composite components. Vogt et al. are not relied upon for disclosing or suggesting the limitations of claim 1 not disclosed or suggested by Johnson et al. Indeed, Vogt et al. do not disclose, or even suggest, the limitations of claims 1 not disclosed or suggested by Johnson et al.

The Office Action references paragraphs 1 to 3 and alleges that Vogt et al. discloses an elastic or adhesive layer. However, the referenced section only discusses "support layers, absorbent pads, elastic components, fastener components, etc." See par. 2. Vogt et al. do not disclose an elastic or adhesive layer, let alone such a layer situated on at least a part of a surface of a light-conducting element and which is only transparent with respect to infrared radiation.

Therefore, the combination of Johnson et al. and Vogt et al. does not render claims 7 and 8 unpatentable. Withdrawal of the present rejection is therefore respectfully requested.

#### **IV. New Claims 10 to 18**

New claims 10 to 18 have been added herein. It is respectfully submitted that new claims 10 to 18 add no new matter and are fully supported by the present application, including the Specification. Since claim 10 includes features analogous to features included in claim 1, it is respectfully submitted that claim 10 and claims 11 to 18, which ultimately depend from claim 10, are patentable over the references relied upon for at least the same reasons submitted above in support of the patentability of claim 1.

**V. Conclusion**

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

Dated: *Nov. 5, 2004*

By:

*Richard L. Mayer*  
KENYON & KENYON  
By: Richard L. Mayer  
*Sp. 42,194*

Reg. No. 22,490  
One Broadway  
New York, New York 10004  
(212) 425-7200

**CUSTOMER NO. 26646**